

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Mail Processing Network
Rationalization Service Changes, 2012

Docket No. N2012-1

PRESIDING OFFICER'S RULING GRANTING IN PART
AMERICAN POSTAL WORKERS UNION, AFL-CIO MOTION TO COMPEL
RESPONSES TO APWU/USPS-T6-28, 29, 31, 32, 33, AND 36

(Issued May 10, 2012)

On April 18, 2012, the American Postal Workers Union, AFL-CIO, filed a motion to compel responses to interrogatories APWU/USPS-T6-28, 29, 31-33 and 36.¹ The interrogatories seek information related to transportation savings as a result of the network rationalization proposal. The interrogatories were filed on April 6, 2012, the deadline for filing discovery for the purpose of developing intervenor testimony.² The Postal Service filed objections to providing responses on April 16, 2012.³ The Postal Service filed an answer to the Motion on April 20, 2012.⁴ The Motion is granted in part.

¹ American Postal Workers Union, AFL-CIO, Motion to Compel Responses to APWU Interrogatories APWU/USPS-T6-28, 29, 31-33 and 36, April 18, 2012 (Motion).

² Interrogatories of the American Postal Workers Union, AFL-CIO to USPS Witness Cheryl Martin (APWU/USPS-T-6-28-37), April 6, 2012; see *also* P.O. Ruling N2012-1/5, Presiding Officer's Ruling Establishing Procedural Schedule, January 12, 2012.

³ Objections of the United States Postal Service to American Postal Workers Union, AFL-CIO Interrogatories (APWU/USPS-T6-28 through 37), April 16, 2012 (Objection).

⁴ Opposition of United States Postal Service to American Postal Workers Union, AFL-CIO, Motion to Compel Responses to Interrogatories (APWU/USPS-T6-28, 29, 31 through 33 and 36), April 20, 2012 (Answer).

Background. APWU seeks responses to interrogatories APWU/USPS-T6-28, 29, 31-33 and 36, directed to witness Martin.

APWU/USPS-T6-28. State separately the number of PVS routes and the number of HCR routes in each of the following categories:

- Inter-Area
- Inter-Cluster
- Inter-P&DC
- Intra-P&DC

APWU/USPS-T6-29. For each of the following types of routes, state the average miles per route and the average cost per route for PVS routes and, separately, for HCR routes:

- Inter-Area
- Inter-Cluster
- Inter-P&DC
- Intra-P&DC

APWU/USPS-T6-31. You testified (p.5, line 9) that:
“Generally, a truck run that is routinely less than sixty (60) percent full is directed to a consolidation facility so that the Postal Service can take full advantage of the truck’s carrying capacity.”

- a. Is the 60% full designation of truck utilization by Mail Transfer Equipment (MTE) or by actual mail volume?
- b. Does the 60% full designation include empty MTE – that is if a full truck is carrying 50% of MTE that are fully laden and 20% of MTE that are empty, does this load run direct or through consolidation point?
- c. Has the USPS ever engaged in estimating the cube utilization of routes by actual mail cube (not MTE) as a percentage of vehicle cube? If yes, provide examples.

- d. What is the basis for using 60 percent for such decisions – how is the type and size of truck factored into such decision process, and how is the costing adjusted if a smaller truck can be used that provides for 80 percent or 100 percent utilization and reduces operating cost?

APWU/USPS-T6-32. For each of the following types of routes, state how many trucks are directed for consolidation in each category, and state what percentage of trucks in category are directed for consolidation:

- Inter-Area
- Inter-Cluster
- Inter-P&DC
- Intra-P&DC

APWU/USPS-T6-33. On the limited number of plants where studies have been conducted, what is the distribution of cube utilization of vehicle dispatch of Inter-P&DC routes in the following ranges?

- 0-25%
- 21-50%
- 51-75%
- 76-100%

APWU/USPS-36. You testified (p.9, line 5) that: “As a result (of Plant Consolidation), the Postal Service will be able to increase the capacity utilization of trucks that operate between plants.” Does the savings percentage account for current cube utilizations and circuitous routing?

The Postal Service asserts that because the interrogatories were filed on April 6, 2012, which is past the February 24, 2012 deadline for the close of discovery on the Postal Service’s direct case, the interrogatories were filed out of time. The Postal Service further asserts that the interrogatories relate to issues discussed in witness Martin’s direct testimony. Because the interrogatories were filed after the discovery deadline, concern issues discussed in witness Martin’s direct testimony, and provide no explanation for why the interrogatories could not have been submitted prior to the

February 24, 2012 deadline, the Postal Service objects to filing responses. Objection at 3.

APWU contends that the Postal Service ignores 39 CFR 3001.25(a), which allows discovery requests up to 20 days prior to the filing of rebuttal testimony that are designed for the purpose of developing rebuttal testimony. Motion at 2. APWU further contends that the rules do not require discovery requests to be directed to the Postal Service as opposed to a particular witness.

APWU states that each interrogatory seeks information only available from the Postal Service, is relevant to the case, and is necessary for rebuttal. *Id.* It argues that the information is necessary to contest the Postal Service's claims of transportation savings, and the methodologies and assumptions regarding the costs of PVS relative to HCRs. *Id.* at 2-3. APWU asserts the information also is necessary to challenge cost savings estimates and propose alternatives regarding vehicle fleet arrangements. *Id.* at 3.

In its Answer to the Motion, the Postal Service reiterates its objection that APWU had enough time prior to the close of discovery on the Postal Service's direct case to explore the questions raised by the interrogatory with witness Martin. Answer at 4-5. The Postal Service further contends that APWU had an opportunity to explore the issues during oral cross-examination. *Id.* at 6.

The Postal Service contends that APWU must provide more than a bare assertion that discovery is being propounded for the purpose of developing rebuttal testimony to fall under the exception of 39 CFR 3001.25(a) for extended discovery. Otherwise, the Postal Service argues, the exception swallows the rule. *Id.* at 5-6. Additionally, the Postal Service contends the specific interrogatories do not seek the information of the type envisioned by 39 CFR 3001.25(a) during extended discovery. The Postal Service cites examples of "data" and "operating procedures" as provided in the rule. *Id.* at 6-7. The Postal Service contrasts these examples against PVS records from over 100 field offices that witness Martin would have to obtain and extract data from to provide responsive answers. *Id.*

Finally, the Postal Service challenges the relevance of the information sought in the context of the Commission's role of providing an advisory opinion. *Id.* at 8-9. The Postal Service argues that "the purpose of this docket is [to] elicit an opinion regarding whether, as a matter of statutory policy, cost savings are an appropriate motivation for the pursuit of service changes under section 3661 of Title 39, U.S. Code." *Id.* at 8. The Postal Service asserts this question can be answered without perfect information regarding the costs of PVS and HCR transportation, and whether one form of transportation is more cost-effective than the other.

Discussion. P.O. Ruling N2012-1/5 established a close of discovery deadline for the purpose of developing intervenor testimony of April 6, 2012.⁵ The interrogatory was timely filed on April 6, 2012. Whether the discovery is directed towards a specific witness or to the Postal Service itself is immaterial. The Postal Service frequently redirects discovery to the person/institution best able to provide a responsive answer.⁶

The Postal Service presents a valid argument when discussing the exception for extended discovery swallowing the rule for close of discovery on a direct case. The Postal Service's concern is that use of the extended discovery period may be nothing more than a veiled attempt to extend initial discovery. The Postal Service argues that presentation of some justification for use of extended discovery is required.

Interrogatories APWU/USPS-T6-28 and 29 seek data, and the Motion adequately explains how this data is necessary to prepare an analysis that is relevant to the issues before the Commission. In developing thorough and balanced advisory opinions in response to proposed changes in the nature of postal services that will generally affect service on a nationwide basis, the Commission has properly considered whether segments of the overall proposal are inconsistent with the overall goals of providing prompt, reliable and efficient postal services. The impact on Postal Service costs likely

⁵ P.O. Ruling N2012-1/5 supersedes the extended discovery provisions that also exist under 39 CFR 3001.25(a) in this instance.

⁶ This is not meant to imply that a party cannot specifically limit a discovery request to a particular individual.

to result from changes to transportation contemplated as part of the Postal Service proposal is material and relevant in this case. Thus, the Motion is granted as to APWU/USPS-T6-28 and 29.

Interrogatories APWU/USPS-T6-31(a) and (b), and 32 also seek basic information and data that appear reasonably designed to allow for the development of evidence to challenge Postal Service transportation cost savings estimates. The Motion is granted as to these interrogatories as well.

In contrast, interrogatories APWU/USPS-T6-31(c) and (d), and 36 are questions designed to explore how Postal Service evidence was developed and what alternatives were considered. These questions should have been posed during the discovery period that ended February 24, 2012. The Motion is denied as to these interrogatories.

Finally, interrogatory APWU/USPS-T6-33 seeks data on cube utilization of vehicles on types of routes for “the limited number of plants where studies have been conducted....” The Motion does not explain how this data might be used. In the absence of such an explanation, the Motion will be denied as to this interrogatory. At this stage of the proceeding, the Postal Service should not be required to identify, compile and analyze disparate data unless a plausible showing has been made that the data could be necessary for the development of probative evidence.

The Postal Service argues that section 3661 review “is not intended to create a forum for the adversarial development of alternative, competing, or conflicting service change proposals or plans for organizing postal resources by different parties, or for a subsequent recommendation by the Commission regarding which alternatives it would implement if it were authorized to determine which service change to pursue or manage postal operations.” *Id.* at 9.

Advisory opinions are meant to explore Postal Service proposals and offer advice. “Alternative, competing, or conflicting proposals” are welcome and useful contrasts for evaluating the efficacy of proposals put forth by the Postal Service. The specific recommendation of alternative proposals is not the intent. The intent is to allow

the free flow of ideas that may better inform the Postal Service of the likely results of its proposal.

RULING

The American Postal Workers Union, AFL-CIO, Motion to Compel Responses to APWU Interrogatories APWU/USPS-T6-28, 29, 31-33 and 36, filed April 18, 2012, is granted as to APWU/USPS-T6-28, 29, 31(a) and (b), and 32; and denied as to APWU/USPS-T6-31(c) and (d), 33 and 36.

Ruth Y. Goldway
Presiding Officer